

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

## MICHAEL ALBERT WHITE.

**Plaintiff,**

V.

STATE OF WASHINGTON, et al..

**Defendant.**

No. 3:21-cv-05095-BJR-JRC

## ORDER ADOPTING REPORT AND RECOMMENDATION

Having reviewed the Report and Recommendation (“R&R”) of Magistrate Judge J.

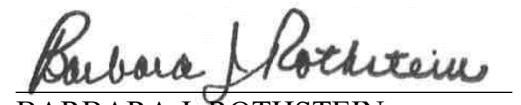
Richard Creatura on Defendant’s motion for summary judgment, as well as the remaining record, the Court hereby adopts the R&R and grants summary judgment for the State of Washington, dismissing Plaintiff’s claims against the State. Because Plaintiff did not file a timely objection, the Court reviews the R&R only for clear error on the face of the record. *Campbell v. U.S. Dist. Ct.*, 501 F.2d 196, 206 (9th Cir. 1974), *cert. denied*, 419 U.S. 879 (1974).

As Magistrate Judge Creatura observed, the Eleventh Amendment has been “authoritatively construed to deprive federal courts of jurisdiction over suits by private persons against unconsenting States.” Dkt. No. 33 at 4 (quoting *Seven Up Pete Venture v. Schweitzer*, 523 F.3d 948, 952 (9th Cir. 2008)). “The ultimate guarantee of the Eleventh Amendment is that nonconsenting States may not be sued by private individuals in federal court.” *Bd. of Trs. of Univ. of Ala. v. Garrett*, 531 U.S. 356, 363 (2001). That includes suits brought against the State

1 under 42 U.S.C. § 1983. *See Hafer v. Melo*, 502 U.S. 21, 25 (1991). Unless the State waives its  
2 Eleventh Amendment sovereign immunity or Congress exercises its power to override the  
3 immunity, Plaintiff cannot maintain a § 1983 suit against the State of Washington in federal  
4 court. *See Will v. Mich. Dep't of State Police*, 491 U.S. 58, 65-66 (1989); *see also Pennhurst*  
5 *State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 104 (1984). Although a Washington statute  
6 allows tort actions filed against the State in state court (Wash. Rev. Code § 4.92.110 (2015)), that  
7 statute does not authorize suits against the State in federal court. *See McConnell v. Crtichlow*,  
8 661 F.2d 116, 117 & n.1 (9th Cir. 1981).

10 The Court concludes that Plaintiff's claims against the State of Washington are barred by  
11 the Eleventh Amendment. The R&R (Dkt. 33) is therefore adopted in full, and Defendant's  
12 motion for summary judgment (Dkt. 24) is granted.

13 DATED this 9th day of December, 2021.  
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16 BARBARA J. ROTHSTEIN  
17 UNITED STATES DISTRICT JUDGE  
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